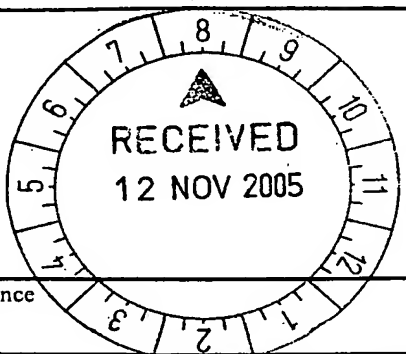


PATENT COOPERATION TREATY

From the:
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

Schuch & Company
PO Box 10615
Level 5, 22 The Terrace
Wellington, New Zealand



PCT

WRITTEN OPINION OF THE INTERNATIONAL
PRELIMINARY EXAMINING AUTHORITY
(PCT Rule 66)

Date of mailing
(day/month/year)

7 NOV 2005

Applicant's or agent's file reference
ROG001

REPLY DUE

within **TWO MONTHS**
from the above date of mailing

International application No.

PCT/NZ2004/000243

International filing date (day/month/year)

6 October 2004

Priority date (day/month/year)

6 October 2003

International Patent Classification (IPC) or both national classification and IPC

Int. Cl. ⁷ G06F 17/30

Applicant

EFFECTIVE MANAGEMENT SYSTEMS LIMITED et al

1. ☒ The written opinion established by the International Searching Authority:

☒ is

☐ is not

considered to be a written opinion of the International Preliminary Examining Authority.

2. This **third** (second, etc.) opinion contains indications relating to the following items:

☒

Box No. I Basis of the opinion

☐

Box No. II Priority

☐

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

☐

Box No. IV Lack of unity of invention

☒

Box No. V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

☐

Box No. VI Certain documents cited

☐

Box No. VII Certain defects in the international application

☐

Box No. VIII Certain observations on the international application

3. The applicant is hereby invited to reply to this opinion.

When? See the **Reply Due** date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the **Final Date** by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established. **If no response is filed by 1 month before the Final Date**, the international preliminary examination report will be established on the basis of this opinion.

Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least **3 months before the Final Date** by which the international preliminary examination report must be established.

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4. For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis. For an informal communication with the examiner, see Rule 66.6.

4. The **FINAL DATE** by which the international preliminary report on patentability (Chapter II of the PCT) must be established according to Rule 69.2 is: 6 February 2006

Name and mailing address of the IPEA/AU

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WRITTEN OPINION OF THE
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

International application No.

PCT/NZ2004/000243

Box No. I **Basis of the opinion**

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This opinion is based on a translation from the original language into the following language
which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1 (b))
- ☐ publication of the international application (under Rule 12.4)
- ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the elements of the international application, this opinion has been established on the basis of *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed.")*:
- ☐ the international application as originally filed/furnished
- ☒ the description: pages **1-18**, as originally filed/furnished
pages , received by this Authority on with the letter of
pages **25**, received by this Authority on **12 October 2005** with the letter of **the same date**.
- ☒ the claims: pages , as originally filed/furnished
pages , as amended (together with any statement) under Article 19,
pages **19-24**, received by this Authority on **12 October 2005** with the letter of **the same date**
pages , received by this Authority on with the letter of
- ☒ the drawings: pages **2**, as originally filed/furnished
pages **1**, received by this Authority on **28 June 2005** with the letter of **the same date**
pages , received by this Authority on with the letter of
- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to the sequence listing (*specify*):
4. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to the sequence listing (*specify*):

WRITTEN OPINION OF THE
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

International application No.

PCT/NZ2004/000243

Box No. V **Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Claims	YES
	Claims 1-30	NO
Inventive step (IS)	Claims	YES
	Claims 1-30	NO
Industrial applicability (IA)	Claims 1-30	YES
	Claims	NO

2. Citations and explanations:

- D1: WO 2001/053941 A2 (THE DELFIN PROJECT, INC.), 26 July 2001
- D8: WO 1998/025198 A2 (STREAMIX CORPORATION), 11 June 1998

NOVELTY (N) and INVENTIVE STEP (IS) claims 1-30

The independent claims continue to lack novelty in comparison to documents D1 and D8. In each of these documents, the described system operates independently of the program which generates the wait events (in D1, figure 4 clearly shows that the "hyperstitial application" operates independently of the web browser by trapping browser events; in D8, item 1145 of figure 11 shows the application running independently, and it is clear that it detects wait events from a wide variety of external sources as described in the abstract and elsewhere):

The dependent claims lack novelty and/or inventive step, as discussed in earlier opinions.